

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In Re:	)	
	)	
THE FINANCIAL OVERSIGHT AND	)	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	)	Title III
	)	
as representative of	)	
	)	No. 17-BK-3283-LTS
THE COMMONWEALTH OF PUERTO RICO,	)	
et al,	)	
	)	
Debtors .	)	

MOTION HEARING

BEFORE THE HONORABLE JUDITH GAIL DEIN  
UNITED STATES MAGISTRATE JUDGE

United States District Court  
1 Courthouse Way, Courtroom 8  
Boston, Massachusetts 02210  
June 18, 2018  
1:34 p.m.

Debra D. Lajoie, RMR, FCRR, CRI  
United States District Court  
1 Courthouse Way, Room 3-209  
Boston, Massachusetts 02210  
lajoiedebr@gmail.com

1 A P P E A R A N C E S:

2 PETER FRIEDMAN, ESQ., and WILLIAM J. SUSHON,  
3 ESQ., O'Melveny & Myers LLP, for Puerto Rico Fiscal  
4 Agency and Financial Advisory Authority

5 MARGARET DALE, ESQ., and TIMOTHY MUNGOVAN, ESQ.,  
6 Proskauer Rose LLP, for The Financial Oversight and  
7 Management Board for Puerto Rico, as representative of  
8 The Commonwealth of Puerto Rico

9 D. FARRINGTON YATES, ESQ., Kobre & Kim LLP,  
10 Independent Investigator

11 LANDON RAIFORD, ESQ., and KERI L. HOLLEB  
12 HOTALING, ESQ., Jenner & Block LLP, for The Official  
13 Committee of Retired Employees of the Commonwealth of  
14 Puerto Rico

15 LUC A. DESPINS, ESQ., and BRADLEY GRAY, ESQ.,  
16 Paul Hastings LLP, for the Official Committee of  
17 Unsecured Creditors

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1 18 JUNE 2018 -- 1:34 P.M.

2 THE CLERK: The United States District Court for  
3 the District of Puerto Rico is now in session, the  
4 Honorable Magistrate Judge Dein presiding, today is  
5 June 18th, 2018. In the matter of The Financial  
6 Oversight and Management Board of Puerto Rico, as  
7 representative of The Commonwealth of Puerto Rico,  
8 et al, Bankruptcy No. 17-BK-3283.

9 Will counsel please identify themselves for the  
10 record.

11 MR. FRIEDMAN: Good morning, Your Honor.

12 Peter Friedman of O'Melveny & Myers on behalf of  
13 AAFAF, as representative of GDB.

14 MR. SUSHON: Good afternoon, Your Honor.

15 Bill Sushon of O'Melveny & Myers.

16 MS. DALE: Good afternoon, Your Honor.

17 Margaret Dale from Proskauer Rose on behalf of  
18 The Oversight Board, as the representative of the  
19 Debtors.

20 MR. MUNGOVAN: Good afternoon, Your Honor.

21 Timothy Mungovan from Proskauer for The Oversight  
22 Board.

23 MR. YATES: Good afternoon, Your Honor.

24 Farrington Yates with Kobre & Kim. We're the  
25 Independent Investigator.

1 MR. RAIFORD: Good afternoon, Your Honor.

2 Landon Raiford, Jenner & Block, for the Retiree  
3 Committee.

4 MS. HOLLEB HOTALING: Good afternoon,  
5 Your Honor. Kelly Holleb Hotaling, Jenner & Block, on  
6 behalf of the Retiree Committee.

7 MR. GRAY: Good afternoon. Brad Gray, with  
8 Paul Hastings, on behalf of the Committee.

9 MR. DESPINS: Good afternoon, Your Honor.  
10 Luc Despins with Paul Hastings on behalf of the  
11 Official Committee.

12 MR. DORSEY: Good afternoon, Your Honor.  
13 John Dorsey on behalf of Banco Popular.

14 THE COURT: All right. Welcome to everyone  
15 here, long time no see, and welcome to everyone in  
16 New York and Puerto Rico who are on the other end of  
17 the phone.

18 I was pleased to see the status reports. Thank  
19 you. Apparently everybody's taking this seriously. So  
20 let's see how much progress we can make. Anything to  
21 update?

22 MR. FRIEDMAN: Your Honor, Peter Friedman.

23 THE COURT: You know what? And I think it's  
24 easiest if you talk from the podium.

25 MR. FRIEDMAN: Peter Friedman from O'Melveny &

1 Myers on behalf of AAFAF, as representative of GDB.

2 Your Honor, as we said in our status report, we  
3 have already now I think a week plus a few days ago  
4 produced to the two Committees on behalf of GDB the  
5 documents that the independent investigator has  
6 identified to AAFAF and GDB that it relies on in  
7 connection with its report.

8 We have agreed to produce a categorical  
9 privilege log to both Committees. Our target to do  
10 that is Wednesday of this week.

11 We've agreed to have further discussions if they  
12 believe that, in this specific instance, a  
13 document-by-document log is necessary. You know, in  
14 many instances, we don't think it's necessary. We  
15 think here, if it's useful, it's something we're  
16 willing to discuss because it's not an enormous set of  
17 documents. So we think, if that's a useful exercise,  
18 it's something we're willing to engage with the two  
19 Committees on.

20 There are a very few limited issues with respect  
21 to a non-disclosure agreement between the Committees  
22 and AAFAF on behalf of GDB. I think it's really down  
23 to one very narrow issue. And, you know, in our view,  
24 we have complied, AAFAF on behalf of GDB and GDB  
25 working together with the AAFAF, have complied with the

1 obligations set out by the Court.

2 You know, just this matter, this report, is of  
3 great -- that the Independent Investigator will  
4 eventually come out with, just to be clear, is of  
5 extreme importance to AAFAF and GDB, and I just want  
6 the Court to know that, that this was a report  
7 originally in some ways that the Governor himself was  
8 contemplating having Puerto Rico do on its own before  
9 the Oversight Board announced that it would conduct  
10 such an investigation under Rule 104 -- I'm sorry --  
11 Section 104 of PROMESA.

12 The Governor and GDB and AAFAF are extremely  
13 interested in the report, what the report will say  
14 about historical practices, what the report will say  
15 about issues which may have led to Puerto Rico's  
16 financial crisis, what the report will say about future  
17 recommendations as to how some issues that may have  
18 contributed to Puerto Rico's financial crisis can be  
19 avoided in the future. It's something that -- just to  
20 be very clear, and I don't know if this come through in  
21 the past, this report is extremely important.

22 GDB's President, Christian Sobrino, who's here  
23 in the Courtroom with me today. Mr. Sobrino, right  
24 there, who's also the Governor's ex officio  
25 representative to the Oversight Board, is with me. You

1 know, the Court required that a GDB person come here,  
2 but Mr. Sobrino is happy to be here today, as he will  
3 be happy to be interviewed by the Kobre & Kim special  
4 investigative team. He's also joined by GDB's General  
5 Counsel, Belen Fornaris Alfaro, both of whom came up  
6 today.

7 And so, you know, as I said, this report is  
8 extremely important. We look forward to reading it, we  
9 look forward to continuing to cooperate with the  
10 Special Investigator from Kobre & Kim. You know, GDB  
11 is not a Title III Debtor. Hopefully it never will be.

12 As the Court has heard from previous issues, GDB  
13 will be actually trying to do something that no other  
14 Commonwealth territorial instrumentality has done to  
15 this point, which is it has successfully entered into a  
16 restructuring agreement with its creditors voluntarily,  
17 has reached consensus, is going to ask for this --  
18 for the District Court to hear a Title VI proceeding,  
19 which I think is actually a pretty remarkable step in  
20 Puerto Rico's restructuring and one that deserves a  
21 tremendous amount of credit and praise for GDB having  
22 reached out to its bondholders and come to an agreement  
23 and is prepared to submit that to an appropriate level  
24 of scrutiny, you know, in procedures that I know have  
25 been discussed already with this Court that will be the

1 subject of informational motions, will be the subject  
2 of a proceeding to be commenced sometime in July and  
3 will seek approval of in the fall.

4 And I think it would be remiss not to note how  
5 important that is and what an important step that is by  
6 GDB. And, Your Honor, to the extent there have been  
7 some hiccups or disconnects in the discovery process to  
8 this point, we will do our best to avoid those in  
9 connection with a Title III, where we think discovery  
10 should be -- Title VI, where we think discovery should  
11 be extremely limited. We will work our best to avoid  
12 any hiccups in that discovery process.

13 That's all I have to say, Your Honor. I'm sure  
14 others will have things to say or characterizations to  
15 make that I will be back to rebut if I need to, unless  
16 you have any questions.

17 THE COURT: Let me just ask you, on the NDA, is  
18 it -- the remaining issue something you need me to be  
19 involved in, or do you think it's going to get worked  
20 out?

21 MR. FRIEDMAN: I'm not sure. It's on an  
22 exceedingly narrow issue, Your Honor, and I'm hopeful,  
23 since I believe what we have made is an eminently  
24 reasonable proposal to the Committees as to how to  
25 handle that issue, it can be worked out. If it can't,



1 as I said, I'm happy to come back up and rebut anything  
2 that's been said and explain why the approach we're  
3 taking is the right one.

4 THE COURT: All right. So, before we end today,  
5 we ought to have a schedule for that because I think it  
6 ought to be resolved, and maybe we can do it on the  
7 paper, maybe we can do it on phone. I don't know that  
8 everybody needs to come back, but if we're that close,  
9 it ought to get done.

10 MR. FRIEDMAN: We agree. We'd be happy to have  
11 a telephonic conference, if necessary. Look, I'm sure,  
12 Your Honor, that other people will have comments about,  
13 you know, issues that they perceive. And, frankly, I  
14 don't think any of the issues that you may hear about  
15 are actually ripe for decision today, so we'll -- you  
16 know, to the extent we need to come back or have a  
17 hearing, we'll do what we need to do.

18 THE COURT: I'm here. You're always welcome.

19 MR. FRIEDMAN: Thank you, Your Honor.

20 THE COURT: All right.

21 Oversight Board? Anybody want to tell me what  
22 the update is?

23 MR. YATES: Your Honor, it's Farrington Yates  
24 with Kobre & Kim in New York. As a preliminary matter,  
25 I'm not admitted in this District, so the Clerk asked

1       that I make that -- make you aware of that and seek  
2       admission pro hac for purposes of the hearing today.

3               THE COURT: Any objections?

4               We usually make you pay the fee before we allow  
5       you to talk, but I think we'll allow you to talk today.

6               MR. YATES: Thank you. I appreciate the  
7       courtesy, Your Honor. I swear we're good for it.

8               So, in response to the order that was issued by  
9       the Court from the last hearing, the Independent  
10      Investigator has filed a statement addressing the  
11      concerns that were raised by the Court and also  
12      addressing with detail some of the very specific  
13      requests that were made with respect to search terms,  
14      custodians and where we are with respect to ongoing  
15      productions vis-a-vis third parties currently.

16              I wanted to caution the Court, Your Honor, that,  
17      as we filed this, we were careful to keep the  
18      witnesses -- to keep from contaminating the witnesses.  
19      So, with respect to Popular, they only saw the exhibit  
20      that was relevant to them. With respect to Santander,  
21      they only saw the exhibit that was relevant to them,  
22      Exhibit B. Same with GDB/AAFAF, which was Exhibit C.  
23      And then the Committees have seen all of the exhibits,  
24      A through E.

25              So, with respect to the report, we have shared

1 with both Committees the search terms and custodians  
2 that we have utilized when doing our document discovery  
3 with respect to Santander, Popular and GDB. So, we had  
4 the opportunity to speak with counsel for both on  
5 Friday after our filing to solicit any additional input  
6 or further guidance in light of the filings as far as  
7 what else they would suggest as far as what we need to  
8 do going forward.

9 We also made clear that, even though we are  
10 starting the process to file and prepare a final  
11 report, there is time, where we are continuing to  
12 receive documents from various witnesses. We can go  
13 back. We intend to go back and interview some  
14 witnesses again as the process has continued, and so we  
15 do actively solicit their input with respect to any  
16 remaining matters. So, with respect to your order, I  
17 believe that we have responded as you requested with  
18 respect to Popular, Santander and GDB.

19 With respect to the fourth category, which is  
20 productions that are coming from third parties, we are  
21 subject to nondisclosure agreements with each. We have  
22 asked that they allow us to disclose to the Committees  
23 any materials produced to us that have been identified  
24 or characterized as confidential. They have all  
25 refused. And so, we have the documents, and our intent

1 was -- you asked for our position -- we'll not disclose  
2 the search terms or the custodians used in order to  
3 generate that production absent their consent or absent  
4 a Court order, and we may talk about that a little  
5 later on when -- I know you asked specifically about an  
6 exit plan.

7 Then, with respect to third parties that have  
8 produced to us that have allowed us to produce to the  
9 Committees, that is Exhibit E, and there is just a  
10 handful, and it's mostly addressed towards documents  
11 that have already been made public, so they're already  
12 in the public domain.

13 So, with respect to the documents that are  
14 housed with respect to the third parties, counsel for  
15 the Oversight Board referenced at the last hearing an  
16 exit plan, and the Court requested that we, the  
17 Independent Investigator, comment on that, specifically  
18 and particularly the timing. And so what we stated and  
19 what we intend to do is something that is fairly  
20 customary with respect to examiners and bankruptcy  
21 cases, even though we are not in the Title III case;  
22 we're operating in Title I, but we thought that the  
23 procedures provided guidance on how to proceed.

24 And so what we intend to do, because we really  
25 don't have any sort of an issue or an interest in

1 keeping materials away from a particular party or  
2 resolving any sorts of disputes about what needs to be  
3 disclosed and what is not disclosed, and so our  
4 intention was to file a procedure, motion, that would  
5 authorize us to put these materials into a depository.  
6 Subject to whatever NBAs or other agreements are in  
7 place, they would be put there and preserved.

8 As part of that process, then any party or party  
9 in interest, committees, creditors, et cetera, that  
10 want access to those documents, they come to Court and  
11 ask for them, and if there's any disputes about whether  
12 they're entitled to them or not, then the Court can  
13 address those issues then.

14 As part of the procedures as well, we talked  
15 about confidentiality procedural process. Although we  
16 have NDAs that -- with all of these parties that  
17 provide for the Independent Investigator broad  
18 disclosure rights, if there is a particular specific  
19 attribution to a witness or something that a witness  
20 has identified as being particularly critical or  
21 confidential, we would give them notice and give them  
22 an opportunity to come in and ask that, that statement  
23 not be published.

24 And we of course would be taking a position  
25 consistent with our mandate, which would be we need to

1 publish a final report that talks about the issues that  
2 have already been addressed here for the good of the  
3 people of Puerto Rico so that they have the benefit of  
4 our investigation of what may have happened in the past  
5 and what sort of recommendations we will make for the  
6 future.

7 THE COURT: So, do you anticipate filing on  
8 July 3rd a proposal for the -- what the exit plan would  
9 look like, and then we would have some time before the  
10 report is issued to sort of finalize that process as  
11 well, or do you expect to negotiate with the others  
12 before you file on July 3rd?

13 MR. YATES: Sure. I think it's a bit of both,  
14 to be honest with you. Our deadline for our purposes  
15 is July 3rd so that we can have the relief granted and  
16 procedures approved by the end of July. That  
17 corresponds with our publishing the final report, which  
18 we said would be happening at the end of summer.

19 I know that the Committees have asked that they  
20 provide input into any motion that we file. Of course  
21 we will be talking with them about the process. In  
22 bankruptcy cases and others, they are actively  
23 involved, so it was always our intention to bring them  
24 into the discussion.

25 What I would expect is the plan will be -- the

1 exit plan would be reflected in the motion, and from  
2 the time it's filed until the time it's heard and  
3 approved, there would be opportunity for parties to  
4 come to us and ask for changes, modifications,  
5 et cetera. As we've stated, what our intention is with  
6 respect to documents, et cetera, to the extent that  
7 parties want access or if parties want to prevent  
8 access, I assume that they will step forward as well.

9 So, what we're trying to do is corral the  
10 process and all of these competing interests into one  
11 process that will be resolved in July so that, when the  
12 report is published, and we said at the end of summer,  
13 it will all be in place.

14 THE COURT: So, does it -- I guess one of the  
15 things we'll talk about today is whether it makes sense  
16 to aim for that final date at the omni, which is  
17 July 24th, something like that?

18 MR. YATES: That's right, Your Honor. So, I  
19 wanted -- that invites one issue. So, the question is:  
20 Where does the special -- the Independent Investigator  
21 file the motion; right?

22 As I indicated previously, we're operating  
23 in Title I under PROMESA, and everybody's here in  
24 Title III in the restructuring case, and so our client  
25 has not decided affirmatively whether we should file

1 here in the Title III proceeding or in the Title under  
2 Title I. I don't think it matters either way,  
3 Your Honor, and I don't think it impacts the timing at  
4 all, and here's the reason why: So, if we file under  
5 Title I, we would need to file the motion with the  
6 District Court for Puerto Rico. We would certainly  
7 advise them of the related proceedings with respect to  
8 the Title III restructuring, and then the Court would  
9 decide what to do with the motion next.

10 So, we expect that, whatever that decision is,  
11 we will have a hearing to resolve any and all of these  
12 issues prior to July, the end of July, because we'll be  
13 giving notice to all of the affected parties one way or  
14 the other, so we don't think this affects timing.  
15 We've stated in our Statement of Position that we're  
16 committed to filing this by the 3rd of July, and we  
17 intend to have it heard either in the District Court of  
18 Puerto Rico or at the omnibus, if that's where it  
19 ultimately winds up, prior to the conclusion of July.

20 THE COURT: Okay. I guess my -- I haven't  
21 really thought about where it's appropriately filed,  
22 and you'll have to make that initial decision, but I  
23 guess for our purposes, it's a process that we need to  
24 finalize around the time of the omni. So, my guess is  
25 it's going to be on the agenda one way or another.



1 Whether it's actually formalizing the exit plan or  
2 dealing it within the context of a 2004, I don't know,  
3 but I think we need to aim for that date as the final  
4 and comments -- the comment period being before then.

5 MR. YATES: Absolutely, Your Honor. We hear  
6 your -- we'll be sure to follow that schedule.

7 THE COURT: Okay. I'm good. I'm waiting for  
8 the Committee to tell me all the things that we've  
9 missed.

10 MR. YATES: I'll sit down, then. Thank you.

11 THE COURT: Thank you.

12 MR. DESPINS: Good afternoon, Your Honor.  
13 Luc Despins with Paul Hastings on behalf of the  
14 Official Committee. First, thank you very much for  
15 modifying the start time of the hearing. Much  
16 appreciated.

17 THE COURT: Is that for travel purposes?

18 MR. DESPINS: Yes.

19 THE COURT: Just so I know. I mean, it doesn't  
20 matter to me, so in the future we'll keep it at 1:30.  
21 That works better for everybody?

22 Okay.

23 MR. DESPINS: Sure.

24 Your Honor, the first thing -- so, you read the  
25 landscape correctly. There are some issues remaining.

1 The entry of the order by Your Honor did facilitate the  
2 process tremendously, and we appreciate that. But let  
3 me hit them one by one.

4 So, the first thing is that GDB says we've -- or  
5 sorry -- the Investigator tells us that we have  
6 received, the Committees have received production of  
7 everything that's been produced to them by GDB. And  
8 that's not accurate technically, so let me explain why.

9 The way they proceeded is they -- GDB, or AAFAF,  
10 gave access to their computer systems in a read-only  
11 mode to the Investigator's lawyers. So they went down  
12 there, and they had tons of search terms, they ran  
13 searches, and when you look at the documents that these  
14 searches produced, it's hundreds of thousands of  
15 documents.

16 They then reviewed those documents and decided,  
17 We only need paper -- a subset in paper form of 5,700.  
18 We'll take their number for granted for now. But the  
19 whole purpose of this is that the Committees could have  
20 access to the same things that they had access to. So  
21 we're only having access to what they determine is  
22 relevant. So I'll give you -- to make this easy to  
23 understand from a paper point of point of view, it's as  
24 if there's a box with 100,000 pages of documents, they  
25 selected what was of interest to them in that box, and

1 we're only seeing that second box.

2 So, obviously -- you know more about document  
3 production than I do, but you know, a document is  
4 produced if it's made available. So, when they say  
5 they've produced to us everything that has been  
6 produced to them, that's not accurate because they saw  
7 hundreds of thousands of documents more than what  
8 they're giving us.

9 So, how do we fix that; right? So I think that,  
10 you know, we need to -- we'll work with them again  
11 but -- to try to get access to other documents, not  
12 only the ones they determine to be relevant, but that  
13 needs to be fixed somehow because, otherwise, we're not  
14 seeing the universe of documents they had, that were  
15 technically produced to them.

16 THE COURT: But what I don't want to have is a  
17 total review of irrelevant materials. And so part of  
18 the rationale in my mind for ordering the production of  
19 the search terms was to see if there was an appropriate  
20 limitation.

21 The Commonwealth -- we just simply can't afford  
22 to have hundreds of thousands of documents reviewed  
23 multiple times if most of them are not relevant. So  
24 somehow we need to figure out the way that a review --  
25 I understand what you're saying, that you don't want to

1 be limited to just the ones that were identified as  
2 hard copy, but I'm not -- it doesn't make sense for us  
3 to be reviewing hundreds of thousands of documents  
4 again.

5 MR. DESPINS: I understand that fully,  
6 Your Honor. If they had searched -- if they had shared  
7 the search terms, you know, three months ago, as we  
8 asked them, we wouldn't be in this predicament now.  
9 But we'll try to find a way. But it cannot be that  
10 we're limited to the 5,700. Oh, by the way, 60 percent  
11 of the 5,700 are what I call phone books, meaning deal  
12 documents that are -- most of them public, so if you  
13 look at emails and all that, it's a very small portion  
14 of that. So, yes, we need to be cost-conscious. We  
15 can't review -- do the same review twice.

16 On the other hand, we can't be limited to what  
17 they found of interest because there may be other  
18 documents that are of interest. So that's the first  
19 issue, and I represent to the Court that we'll work on  
20 that, but I think we need to continue the same concept  
21 of the short leash that you've imposed, which is that  
22 we need to be able to come back to Your Honor at some  
23 point soon if we can't resolve that issue. But that's  
24 the first issue.

25 The second point is the exit plan, and we're

1 happy to see that they are on top of that issue, so it  
2 is a kind of a TBD issue, but I need to address this  
3 Title I versus Title III. I understand where they're  
4 coming from, but if this is filed in a Title I  
5 proceeding, first of all, they would have to -- there's  
6 no Title I proceeding pending anywhere -- right? -- as  
7 opposed to the Title III proceedings are pending.  
8 There's no Title I proceeding pending anywhere, so they  
9 would have to start some kind of litigation. We would  
10 need to remove it to the Title III Court, and basically  
11 we're setting up a morass of procedural motions that  
12 will take forever.

13 I mean, I don't want to do what I am proposing  
14 but there's a very easy way to do this, which is we  
15 could serve a subpoena on the Investigator to say,  
16 Produce everything you received, and of course he would  
17 come back and say, No, I can't do that, I'm bound by  
18 confidentiality, which is fine, and then the Title III  
19 Court, which is you or Judge Swain, would resolve the  
20 issue.

21 That's -- but to start some kind of proceeding  
22 in another Puerto Rico District Court, because it  
23 doesn't go to Judge Swain automatically or to you  
24 automatically, will -- you know, in terms of fees,  
25 that's going to create a lot of -- and I know what's

1 going to happen, they'll say, The Committees have no  
2 standing in the Title I proceeding, and that's going to  
3 take a life of its own. So, I applaud the idea of an  
4 exit plan, but to file this -- and I know they have not  
5 made a final decision, I heard that, but to commence  
6 this in a Title I fashion would be a procedural morass.

7 Next point, Your Honor: There's an issue  
8 floating, not for today, but I want to make sure  
9 Your Honor has it, which is the issue of privileged  
10 documents produced by the GDB to the Investigator.  
11 There is an issue, we don't need to debate it, I'll  
12 stipulate that GDB forcefully disagrees, but there's an  
13 issue as to whether they waived the privilege by  
14 producing it to the entity investigating them. Not a  
15 today issue, for later, but I want you to know that's  
16 coming.

17 Now, let's talk about the NDA. Assuming that  
18 the issue that Mr. Friedman was referring to is what I  
19 think it is, which is the issue that they want to  
20 create a special category of documents that would not  
21 be produced, that special category, and I've been  
22 criticized for describing it in the past as the highly  
23 damaging document category, so I will not use that, but  
24 I'll quote from their language, which is that they  
25 don't want to produce documents that would -- "if

1 necessary to prevent a risk of harm to the elected  
2 Government of Puerto Rico in the exercise of its  
3 political or governmental powers." That's made out of  
4 whole cloth. There is no such privilege to withhold.

5 And what we've said about this is the following:  
6 If you want to do that, which is a concept that does  
7 not exist anywhere, we haven't heard of any case law to  
8 that effect -- and by the way, you've been dealing for  
9 the last four or five months with the other 2004  
10 discovery; you remember that? There's never been, to  
11 my knowledge, ever a mention of that category of  
12 documents that could be withheld, never.

13 And they're telling us here that they have not  
14 identified any such document, but there could be some.  
15 This is, like, August 15th. I'll come back to it in a  
16 second. My gut tells me the reason they're fighting  
17 for this is because there are such documents that are  
18 problematic. Do I know that? No. But the fact that  
19 there has been no request for that special category in  
20 the other 2004 tells me that there's something peculiar  
21 about what we're going to find in this discovery.

22 So, that's the issue, Your Honor. And the  
23 Committee's view is there's no basis in law to withhold  
24 documents like this. We're sensitive to the issue, so  
25 we're proposing that, in preliminary, they would have

1 to produce them "attorneys' eyes only" so that there's  
2 no risk of leaks in Puerto Rico if there's something  
3 really damaging because that means we would get them,  
4 all these things, or Jenner & Block, and we would be  
5 under strict instructions not to share it with our  
6 clients as a stop-gap measure.

7 But the concept that somehow they can just  
8 withhold, prepare a log, and then we have to duke it  
9 out as to whether they have a right to withhold that  
10 is, frankly, a concept I've never heard of before, and  
11 I don't understand what would be the basis for that  
12 here. So that's the issue on the NDA.

13 THE COURT: Let me just ask on that while it's  
14 fresh in my mind. Right now, there are no such  
15 documents?

16 MR. FRIEDMAN: Your Honor, Upton Sinclair once  
17 said that it's difficult to get someone to understand  
18 something if their livelihood depends on them or their  
19 fees depends on them not understanding them, which is  
20 what I think you just heard.

21 THE COURT: No, no, no, no, I don't want that  
22 kind of argument.

23 MR. FRIEDMAN: The issue is -- the speculation  
24 we just you just heard, Your Honor, is made up. The  
25 issue here, why there is a 2004 issue in this case, as



1       opposed to the financial disclosure information in the  
2       other Rule 2004, is just very simple. One conducts  
3       an investigation -- one relates to an investigation of  
4       past activity, which is going to -- potentially could  
5       deal with claims against people, an investigation the  
6       Puerto Rico Department of Justice was at one point  
7       going to conduct. It's just an entirely different kind  
8       of investigation.

9               So, to speculate that because, in one kind of  
10       investigation, you ask for a provision which would  
11       permit Puerto Rico, if it believes it's necessary, to  
12       deal with some sensitive investigative topic with a  
13       co-equal branch of the Puerto Rico Government, as the  
14       Oversight Board is, to not have to produce it to -- of  
15       course, let's just remember, this is not the GDB  
16       Creditors' Committee; this is the Commonwealth  
17       Creditors' Committee -- so to a complete stranger to  
18       GDB is not at all inappropriate.

19              In fact, it's entirely appropriate, Your Honor,  
20       and as we've said, we've identified, in the 5,700  
21       documents to this point, nothing. There's a -- I don't  
22       know how many more documents there are. It's not our  
23       intention to put anything on this log, but if we do,  
24       we'll identify what it is in a log, and we will carry  
25       the burden, before it goes to anybody outside the

1 Puerto Rico Government, of --

2 THE COURT: So, it seems to me -- I hate  
3 fighting over nonexisting documents, I really do, and I  
4 seem to spend a lot of time doing in a lot of my cases.  
5 So, let me make it clear. You need to sign the NDA on  
6 all the terms that you've agreed on. If this is the  
7 one that you haven't agreed on, then there's a  
8 provision that says they reserve the right to fight  
9 this out later.

10 But this shouldn't stop the production of the  
11 documents under an agreed-upon NDA; all right? I don't  
12 want to make a ruling on the applicability of a  
13 privilege that may or may not exist in an abstract. So  
14 why don't you just add that final paragraph that says,  
15 GDB reserves the right to claim whatever, at which  
16 point, the Court will determine whether it's  
17 appropriately included in the NDA.

18 MR. DESPINS: Well, it's their burden to come to  
19 Court to seek a ruling from Your Honor that it is  
20 privileged.

21 MR. FRIEDMAN: Well, we haven't said privileged,  
22 Your Honor. We're not asserting necessarily a  
23 privilege; we're asserting a condition we think is  
24 appropriate under the circumstances, which, again, we  
25 have not identified a document to which that would

1       apply. But, yes, we would bear the burden of saying to  
2       the Court, This is why the document should not go  
3       outside the Government.

4               THE COURT: So, put it in terms of they'll seek  
5       a protective order for producing the --

6               MR. DESPINS: For not producing.

7               THE COURT: -- for not producing the documents;  
8       all right? But other than that, if you've agreed on  
9       all the other terms of the NDA, it ought to be  
10      signed --

11              MR. DESPINS: Okay. All right.

12              THE COURT: -- okay?

13              MR. DESPINS: We just don't want to create, you  
14      know, categories that we don't believe exist under the  
15      existing law, but okay.

16              THE COURT: You may be right or not, I don't  
17      know, but I'm not going to give you a ruling in the  
18      abstract on almost anything but certainly not on this.

19              MR. DESPINS: Okay. Then, the next issue is the  
20      issue of production by third parties, Your Honor, so  
21      we're talking about non-GDB, non-Banco Popular and  
22      non-Santander, and there are a bunch of issues there.  
23      The first thing is the Investigator says that the  
24      search terms they used for those parties may be  
25      confidential.

1           You know, we don't know how that's the case, but  
2     the point is that you wanted to avoid duplication, so  
3     if we don't know what the search terms are, we don't  
4     know how to give them -- or correct the search terms.  
5     If the producing parties are willing to live with that,  
6     you know, that's -- that doesn't bother us. I think  
7     it's going to delay the process, but we don't think  
8     that giving us the search terms would breach an NDA  
9     with a bank because we've seen the other search terms  
10    as to -- so it's hard to believe that the use of, I  
11    don't know, the term "insolvency" as a search term  
12    somehow would violate an NDA.

13           But the point is the consequence of not forcing  
14    them to give us the search terms on the third parties  
15    is that we may be back here August 15th with -- you  
16    know, it's not going to be as efficient as Your Honor  
17    anticipated. So that's the first point.

18           The second point is that it appears that a  
19    number of third parties were not provided search terms,  
20    meaning they were told, This is what we want  
21    generically, so produce what you have on that, as  
22    opposed to telling them, Go into your email system and  
23    do the following search. And, well, the problem with  
24    that is of course we're relying a hundred percent on  
25    the third party to do what's right, and you know, it is

1        what it is, but I think that's -- what I mean by that  
2        is that, on August 15th, I don't think we're going to  
3        be necessarily asking the same thing. We may ask them  
4        to run specific search terms, so they may say, We've  
5        produced all of that already, which is fine, but the  
6        point is that I want you to know there's a number of  
7        them where no search terms were used.

8                The second part about this list of third parties  
9        is that -- and you have that -- is that a number of  
10       them, I count five of them, those are the folks --  
11       right? -- who said, No, don't give it to the Committee,  
12       don't -- to the Committees in plural, these are people  
13       who are Court-retained in this case, meaning the first  
14       one is local --

15               THE COURT: I want to make sure that we're not  
16       going into any sealed information right now. So you  
17       have concerns about some of the categories of people,  
18       but let me go back a little bit more, though, to the  
19       2004 motion. That was to the banks. I don't remember  
20       them dealing with the third parties.

21               MR. DESPINS: That's correct. Yeah, but it  
22       doesn't --

23               THE COURT: No. I just want to make sure that,  
24       if we're focusing on the 2004 motion, that was to the  
25       three financial institutions.

1 MR. DESPINS: Correct, Your Honor, but --

2 THE COURT: So now we're trying to make it  
3 better so that, when the end of this report comes, it  
4 comes as efficiently as possible.

5 MR. DESPINS: This is the same thing as a  
6 subpoena to the Investigator, meaning we can amend our  
7 motion tomorrow and take that list and say, Give all  
8 of -- it would be the same -- we can do that. I mean,  
9 I don't want to be tripped up in August by not having  
10 amended our motion to include all those folks, but --

11 THE COURT: You won't be tripped up in August.

12 MR. DESPINS: Okay.

13 THE COURT: I'm just trying to make sure that  
14 we --

15 MR. DESPINS: You're correct.

16 THE COURT: -- move this as efficiently as  
17 possible and that the big focus is on the three  
18 financial --

19 MR. DESPINS: You are correct. But as to those  
20 entities, the point I want to make, no need to mention  
21 who they are, but there are five of them that are  
22 Court-retained professionals getting paid in this case.  
23 So those are the folks who are saying, No, I don't want  
24 to share the documents that I have. These are people  
25 who were instrumental in structuring these transactions

1 in the past, and they're saying, No, I don't want to  
2 share our documents with the Committee.

3 I mean, that's a bizarre set of facts,  
4 Your Honor, that Court-retained professionals would  
5 refuse to share the documents that they have from prior  
6 relationships with the Government with the Committee.

7 THE COURT: So, have you had the opportunity to  
8 have this conversation with --

9 MR. DESPINS: Well, we have, meaning that we've  
10 asked for the documents, and you've heard Mr. Yates  
11 saying basically, These people -- we've asked them,  
12 those third parties, to provide -- to allow us to share  
13 with the Committees, and they said no. My point is  
14 that those -- five of those at least are right before  
15 this Court, or at least before Judge Swain, as  
16 professionals getting paid by the estate, and they're  
17 saying, No, I don't want to share documents.

18 That's bizarre, and that should not happen. At  
19 the very least, these people should be told that, you  
20 know, if they want to continue their involvement in the  
21 case, they should produce documents -- they should  
22 allow the Investigator to share these documents. As I  
23 said, these are people who were instrumental in  
24 structuring a lot of these documents pre-bankruptcy.  
25 So, that's another issue with the third parties.

1           The next issue with the third parties is --  
2       well, we've talked about this -- we don't have the  
3       search terms. There are some -- and we'll provide this  
4       to Mr. Yates. There are some banks that were involved  
5       as underwriters and who are not on that list. No need  
6       to talk about that, but we'll give that to Mr. Yates  
7       after the hearing.

8           And next item, Your Honor, is August 15th, and  
9       I -- you know, I said at the last hearing nobody was  
10      talking about August 15th, but Mr. Mungovan said,  
11      Oh, no. It's August 15th. Now we're hearing the  
12      end of the summer. End of the summer is I think  
13      September 21st. So we have this -- I think that's  
14      technically the end of the summer.

15           THE COURT: I'm waiting for summer to start.

16           MR. DESPINS: Okay. So, the point here is that  
17      we have this motion for asking the Court to make some  
18      determination as of August 15th, and we're asking the  
19      Court again to rule on that because September 21st is a  
20      full month after that, plus it's just teeing up further  
21      discovery fighting for the next month after that, so --  
22      by the way, I'm not against the Investigator taking  
23      their time to write the best report that they can, so  
24      I'm not trying to rush them to September 21st, and they  
25      have their own objective, I applaud that; but, on the



1 other hand, this doesn't work anymore in terms of  
2 starting our own process. So that's -- so there's the  
3 August 15th date.

4 Now, the search terms and custodian, Your Honor,  
5 we've made some comments on the Friday call with -- or  
6 not we, I was not on the call, but some colleagues of  
7 mine have made some suggestions. We will have more.  
8 There's a number of terms that should be researched,  
9 and so that will happen. But the bottom line,  
10 Your Honor, is that we need to deal with August 15th,  
11 we need -- the production by the other parties, we need  
12 to somehow at least facilitate that with respect to  
13 Court-retained professionals. They shouldn't have any  
14 discretion to withhold this from the Committee in the  
15 case.

16 And then the other issues I raised, which is the  
17 access to the GDB document, not the 5,700 that were  
18 produced but another subset -- not subset -- another  
19 set of the documents that's broader than that. And on  
20 that, we will work with the parties to come up with a  
21 rational approach that's cost-effective, but I am  
22 asking the Court to keep that on a short leash.  
23 Otherwise, we'll be here August 15th arguing about the  
24 same thing.

25 THE COURT: All right. Before I hear a response

1 to it, does the Retirees' Committee want to chime in?

2 MR. RAIFORD: Please.

3 The beauty of going last is that I get the  
4 benefit of what everyone else thought, but then I have  
5 the burden of not repeating what everyone else just  
6 said. So I will start with this: On last Friday, the  
7 Retiree Committee had a nice call with Kobre & Kim, as  
8 we usually do on Fridays, and we made some suggestions  
9 later on in the afternoon via email, all designed to  
10 achieve I think what Your Honor brought up originally  
11 in November, which was, How can we do this where we're  
12 not all doing the same thing over and over again? It  
13 doesn't make sense financially, and quite frankly, I  
14 would pity the poor souls at Jenner who had to go and  
15 look through millions of documents that the  
16 Investigator already looked at. We have no interest in  
17 reinventing the wheel.

18 So, we made several suggestions. One was to  
19 make sure that the draft of the exit plan is given to  
20 both Committees before July 3rd. I heard -- Mr. Yates,  
21 who's been very helpful throughout all this process,  
22 said we'll be included in discussions, and that is  
23 wonderful. I just want to make sure that by that he  
24 also means the Committees will see the actual document  
25 before it's filed because I do think we can give some

1 insight that would be helpful. Now, they may not agree  
2 with everything we want, but I think there are some  
3 things that they can live with, and I think it would  
4 shorten the time that we would spend fighting over the  
5 exact terminology and what is in the exit plan.

6 Other things that we wanted was that, at least  
7 maybe in the data room that they're going to provide,  
8 that they include the exact document request that they  
9 made, not just for Santander, Popular and GDB, but  
10 everyone; who are the custodians for everyone; and  
11 other types of things, again, just to make sure that  
12 the Committees have as much knowledge as they need to  
13 figure out if -- what, if anything, else we think we  
14 need to do.

15 And that -- and another point that we brought up  
16 was, and it's been brought up a little earlier, is  
17 there are tens of thousands of documents that have been  
18 produced to the Investigator, and those individuals and  
19 entities have refused to allow us or the other  
20 Committee to look at them.

21 THE COURT: So, these are the third-party  
22 documents?

23 MR. RAIFORD: These are the third parties. And  
24 we just want confirmation as well that all of those  
25 documents will be in the database when it's produced on

1 July 3rd or whenever because, if it's not, then I think  
2 that it really starts to minimize the effectiveness of  
3 the investigation if the parties, not just the  
4 Committees, but other parties in interest don't have an  
5 opportunity to look at, quite frankly, a vast ocean of  
6 information that at least the Investigator found to be  
7 relevant to his investigation.

8 I won't beat to death the GDB issue, but I think  
9 Your Honor's leaning to what you told us to do, which  
10 is, Just sign the thing and then carve out this  
11 confidential category, and GDB can come to Your Honor  
12 if they ever want to label something like that, and  
13 then we can decide then whether it should be withheld  
14 or not is -- we gave GDB two options today, and I think  
15 that was Plan B. So the Retiree --

16 THE COURT: It should have been Plan A.

17 MR. RAIFORD: Yeah, right. So the Retiree  
18 Committee would support that compromise.

19 I think for -- that is it because, at some  
20 point, my fellow attorneys have done an admirable job  
21 hitting all the other other issues, so I'll shut up.

22 THE COURT: Thank you.

23 Mr. Friedman.

24 MR. FRIEDMAN: Thank you, Your Honor.

25 Peter Friedman from O'Melveny & Myers.

1           So, we agree that the NDA should be executed in  
2           exact accordance with the way you've laid it out. Just  
3           so you know, Your Honor, one of the provisions that  
4           we've agreed to in the NDA is that issues, bilateral  
5           issues -- or I guess trilateral issues between  
6           AAFAF/GDB on the one hand and the Retiree Committee and  
7           the Creditors' Committee on the other hand should be  
8           heard in the Title III case. So, one way or another,  
9           our issues will be resolved before you or Judge Swain,  
10          as Your Honors see fit.

11          Your Honor, with respect to the documents, other  
12          than those which have been relied upon by Kobre & Kim  
13          in connection with the investigation, we have a real  
14          issue with having those produced or made available to  
15          the Unsecured Creditors' Committee and the Retirees'  
16          Committee. You have to understand, this production and  
17          this document-sharing with the Oversight Board was done  
18          not subject to a subpoena but subject to a statutory  
19          right that's much broader than any subpoena.

20          Under 104(c) of PROMESA, which gives the  
21          Oversight Board, when necessary to conduct its work,  
22          the right to basically go to somebody like Mr. Sobrino,  
23          the head of a territorial instrumentality and say, Let  
24          us see all of your documents, let us essentially have  
25          access to your servers. Now, there are many

1 circumstances in which that might not be necessary or  
2 appropriate, but it's clearly appropriate in the  
3 context of this investigation, which was statutorily  
4 mandated under PROMESA.

5 And so, to argue either that that's some sort of  
6 waiver or that the Unsecured Creditors' Committee  
7 should be entitled to all of those materials just  
8 because we were complying with a statutory obligation  
9 imposed by Congress I think creates all kinds of  
10 problems. For one, because of that and other reasons,  
11 which, you know, we'll explain to you if necessary, you  
12 know, the documents which Kobre & Kim don't have in  
13 their 5,700 but may have otherwise looked at we didn't  
14 do a privilege screen on because, as I said, for  
15 multiple reasons, we didn't have to. If we have to  
16 provide those to the Committee, again, not GDB's  
17 committee, but a different entity's creditors'  
18 committee --

19 THE COURT: Can you just back up for me for a  
20 minute, though? So, I understand that the Investigator  
21 had full access to your records.

22 MR. FRIEDMAN: Yes.

23 THE COURT: I'm not talking about that. But  
24 then they did have search terms. Did the search terms  
25 end up with the 5,700, or is there a subsequent

1 production of documents?

2 MR. FRIEDMAN: My understanding is there was a  
3 subsequent cut-down, but there are an extraordinarily  
4 large number of general search term hits, which have  
5 never been reviewed for privilege, which have never  
6 been reviewed by GDB. The cost of doing that and then  
7 having two Committees look at them in the context of an  
8 investigation -- remember what we're talking about.  
9 We're talking about a potential investigation that the  
10 Oversight Board can easily conduct itself if it so  
11 chooses.

12 So, to give the Unsecured Creditors' Committee  
13 and the Retirees' Committee license to spend an  
14 inordinate amount of additional money in terms of  
15 investigation, which we don't even think is warranted  
16 at this stage, you know, is, in our opinion, completely  
17 inappropriate. Remember, the Court has, as I'm sure  
18 you know, the Court has denied the Rule 2004 motions  
19 and said, A, let's see what happens with this  
20 investigation, but we want you to basically be able to  
21 follow along with what the Committee -- with what the  
22 Special Investigative Committee, Kobre & Kim, is doing.

23 And I think giving them -- giving the  
24 Committees, the documents, other than privileged ones,  
25 that are being actually relied upon more than -- is

1 more than sufficient for that purpose, and to let them  
2 decide from a bunch of search terms what the Committees  
3 think is relevant is tantamount to giving them their  
4 own Rule 2004 investigation, again, which -- for a  
5 highly uncertain purpose; right? Again, the Oversight  
6 Board is the party that, in the Title III, is permitted  
7 to object to claims in the first instance. It's the  
8 Oversight Board that's going to be pursuing causes of  
9 action, if it's appropriate.

10 At this point, it's simply economically wasteful  
11 to put on -- to force the Government to be required to  
12 engage in additional document productions. I mean, you  
13 know all the other document productions that are going  
14 on. And so, you know, let the report come out, let the  
15 Oversight Board decide what it wants to do with respect  
16 to causes of action or objections to claims, let's see  
17 what they ask for us in the context of pursuing any  
18 causes of action or defenses to any claims, instead of  
19 having to answer to multiple parties routing around in  
20 the Government's documents and foisting more costs on  
21 us. You know, if I sound impassioned about this, I am.  
22 I think it's -- at this point, forcing us to do more  
23 with respect to those documents would be wasteful and  
24 inefficient.

25 THE COURT: So, the way I generally envision



1       this is that the Committees will be aware of the scope  
2       of the information that has been produced, that they  
3       would await the report, assuming we're dealing with  
4       mid-August and not September 25th -- 21st, okay -- and  
5       that, at that point, if the Committees required  
6       additional document requests, they would need to  
7       justify it and, as I talked about last time, some sort  
8       of budget on it.

9               But I don't want to have that process derailed  
10       with a fight over what was actually produced, like, I  
11       don't want you to be able to say, I've already produced  
12       that and then have the Committee say to me, I can't see  
13       that, that was produced because I don't have the search  
14       terms or whatever it is. And that's the balance that  
15       I'm trying to --

16              MR. FRIEDMAN: Your Honor, we're okay with our  
17       search terms being produced. You know, maybe other  
18       people have an issue with that. We don't have an issue  
19       with that. We're fine with producing our search terms  
20       to the Committee. We are fine producing, you know, the  
21       custodians whose inboxes we provided to the Oversight  
22       Board's Special Investigator. I don't have a problem  
23       with that either.

24              You know, I'm willing to give the Committee the  
25       knowledge as to how the -- you know, as to what we

1 gave. Mr. Yates's client has given the search terms.  
2 I assume -- I mean, Mr. Yates has told me he engages in  
3 dialogue with the Committees before witness interviews  
4 and otherwise so they can have insight into how they  
5 got to the 5,700, why they believe those were relevant  
6 and important. And, you know, again, we were a little  
7 on the late side in doing it, but I think we actually  
8 have done what we're supposed to do and would ask that  
9 the Court, at this point, not order anything more.

10 THE COURT: Mr. Yates.

11 MR. YATES: Thank you, Your Honor.

12 I won't address the issue about privilege  
13 vis-a-vis GDB. The statute, PROMESA, says what it  
14 says, and so that is for others to argue. I think the  
15 key point that I wanted to make was to really refocus  
16 the Court on the exit plan because a lot of the  
17 disputes or issues or questions that are being raised,  
18 we wanted to create a single forum whereby these issues  
19 could be addressed. And so things like, What happens  
20 to the third-party documents? I've already said we  
21 intend to put them into the depository. Will that  
22 include search terms and custodians? We can make that  
23 part of the motion. So this is, again, our attempt to  
24 corral and collar all of these specific issues into one  
25 process.

1           Now, the notion that filing in a District Court,  
2       Federal District COURT of Puerto Rico, is going to  
3       create some sort of procedural red herring, I think  
4       that's misplaced. We can start a miscellaneous  
5       proceeding there, we could advise about these  
6       proceedings, the Title III cases, and we want a  
7       resolution to these issues. And so, if we file with  
8       the United States District Court, the need to remove or  
9       any of these other procedural pathways really obviates  
10      what we're trying to do, which is to, in an efficient  
11      way and a timely way, address these issues, that they  
12      are resolved by the end of July.

13           We put in our response that we're not talking  
14      September 21st. This is -- this date keeps getting  
15      thrown up like it keeps moving, and we've been pretty  
16      clear with our commitment on when this report will be  
17      produced for everyone.

18           So, just to reiterate, we don't have kind of an  
19      interest in trying to keep people from documents or  
20      gaining access, et cetera. That's not our job. Our  
21      job is to find facts, produce a report to benefit the  
22      people of Puerto Rico, and then these fights over who  
23      gets what is really for another day because they'll be  
24      used in other ways, that this Court ultimately is going  
25      to have to decide who gets what.

1 THE COURT: Let me ask you this, though: On  
2 what goes into this document room, I hear part of the  
3 fight being which GDB documents would be included --

4 MR. YATES: Right.

5 THE COURT: -- in what you believe has been  
6 produced to be available to others, and I'm assuming  
7 that's not their whole computer system.

8 MR. YATES: That's correct, Your Honor. So, to  
9 explain our process, we provided search terms, we have  
10 provided those search terms to both Committees. We  
11 asked for them to produce documents, paper documents to  
12 us, which they did. Some of them include privileged  
13 documents. That's already been addressed here. And so  
14 we have those, and I understand the non-privileged  
15 documents have been produced to the Committees.

16 So, this undefined, We must have asked for  
17 something within the million-five using these search  
18 terms and reviewed and excluded as being irrelevant or  
19 for whatever reason, those documents, I can -- we can  
20 construct the process in order to give the Committees  
21 comfort that they are getting what we relied on as we  
22 produce and finalize our report.

23 So, the issue about how we're different under  
24 PROMESA, as opposed to what the Committee may get or  
25 what they say they're entitled to, is an issue that,

1 again, if it needs to be addressed, we thought it would  
2 be addressed as part of this process, this exit plan,  
3 to bring all of these issues together precisely so that  
4 it's concluded and resolved by the end of July.

5 THE COURT: So, does it make sense to say, You  
6 need to meet and confer now, since July 3rd is coming  
7 up, to at least ensure that the proposed exit plan  
8 addresses all of the issues that the Committees have,  
9 especially with respect to the third parties?

10 So, I'm not sure you're going to be able to come  
11 to a resolution of what it is, but at least you will  
12 have a proposal, and that is a good framework for  
13 talking about I guess all of these things, sort of what  
14 is the scope of the GDB documents and -- so, I guess  
15 what I'm saying to the Committees is, using the exit  
16 plan, the burden is kind of on you at this point to say  
17 to the Investigator, We want the exit plan and the  
18 objections process that the exit plan is going to come  
19 up with to have room in it to address the following, be  
20 it privilege, be it the scope of the documents, be it  
21 third parties.

22 How do we deal with the third-party issues? Or  
23 do you say to him, I want the third parties to have --  
24 these five categories should absolutely be produced,  
25 and you can either say yes or no. I mean, I think it

1 makes sense to have the exit plan be the process for  
2 addressing things.

3 On the other hand, I don't want to wait until  
4 August 15th to resolve some of these issues if they are  
5 legal issues that could be resolved before then. So,  
6 now that I've said that, I don't actually know the  
7 right way to do this.

8 MR. YATES: So, Your Honor, I would suggest, if  
9 I could, that we stick with what was envisioned, which  
10 was we are committed to filing this motion by July 3rd.  
11 That gives us an opportunity, because we've said we  
12 always intended to consult with both Committees with  
13 respect to the plan. I can confirm to the Retiree  
14 Committee that certainly both Committees would receive  
15 drafts before filing, and in that way, hopefully, at  
16 least identify for a Court what issues are extant and  
17 what needs to be addressed as part of resolving any  
18 remaining disputes about who gets access to what.

19 THE COURT: So, does it make sense to say -- I  
20 always like sending you home with homework -- coming up  
21 with a schedule for -- first of all, you do need to  
22 meet and confer about what's included in the plan, in  
23 the exit plan.

24 The NDA with GDB I think we've resolved. You  
25 need to sign that, and you can have this category of --

1 to be presented to the Court in the form of a motion  
2 for a protective order, if appropriate; okay?

3 MR. YATES: Okay.

4 THE COURT: So, why don't I ask you to report  
5 back within a week on that, that that's been signed?  
6 Is that okay?

7 MR. DESPINS: Sure.

8 MR. FRIEDMAN: Absolutely.

9 THE COURT: July -- do you need a date for  
10 meeting and conferring before July 3rd, or is -- let me  
11 ask the Committees.

12 MR. YATES: I don't think so, Your Honor.

13 MR. RAIFORD: I don't think so.

14 THE COURT: Is that just something that I can  
15 just smile at you nice and say it'll get done?

16 MR. YATES: We hear you loudly and clearly,  
17 Your Honor.

18 THE COURT: Okay, so that'll be done. And  
19 that'll identify the items in the exit plan.

20 For the Unsecured Creditors' Committee, do you  
21 want a schedule for addressing some of these other  
22 issues? The privilege log is coming out -- what? --  
23 Wednesday?

24 MR. FRIEDMAN: Our anticipation -- yes,  
25 Your Honor, we'll have a categorical log.

1           THE COURT: Do you -- I guess I await a motion  
2 to compel off the privilege log, if there are certain  
3 waiver issues or specific documents or whatever.  
4 Otherwise -- I mean, I'm ready to address it, but it  
5 needs to be in the context of a motion.

6           The briefing on the privilege log, I will let  
7 you all -- on the exit plan, I mean, you can come up  
8 with a schedule, but the goal will be, whether you file  
9 it in the Title I or the Title III, that this will be  
10 on the omni, unless we all decide otherwise, so that's  
11 the outside goal. It may be in the context of the  
12 2004, how do these documents get produced?

13           So, I'm not preventing you from filing the  
14 Title I, I'm not taking an opinion one way or the other  
15 on it, but I think that the production of those  
16 documents is relevant to the resolution of the 2004  
17 motion, so I think it's the same issue. I'm not sure  
18 where it comes up, but I think it does need to be  
19 addressed in the context of our proceedings.

20           So, I need you all to come up with a briefing  
21 schedule on that of there'll be an exit plan, there'll  
22 be a response, I want some time to think about it, and  
23 I want to see if we need discussion or if we can just  
24 have it resolved before the omni or at -- or I'll hear  
25 argument at the omni, if I need to; okay?



1           Who takes the lead on that? Everybody's staring  
2       at me. The Committee?

3           MR. DESPINS: Sure, we can do it.

4           THE COURT: All right. Would you do that?

5           So, what else -- a lot of your issues were to be  
6       determined, as opposed to actually needing resolution.

7           Is there anything else that needs to be resolved  
8       right now?

9           MR. DESPINS: I would just say, Your Honor, that  
10       I don't think the exit plan will resolve the issue of  
11       us having access to what was produced. I'm not talking  
12       about paper produced but what they had access to. That  
13       issue, you know, we'll need to come back, Your Honor,  
14       if we can't resolve it. But I don't see how the -- you  
15       know, how the Investigator can resolve that issue  
16       through an exit plan because he can only give us the  
17       documents that were -- that he actually -- the paper  
18       documents that he has, which we have at this point, the  
19       5,700 pages.

20          THE COURT: So, the exit plan can have a  
21       schedule in it for discussion of what should be  
22       included in the room; all right? And if that is a way  
23       to join the issue, maybe that makes sense?

24          MR. DESPINS: Okay.

25          MR. FRIEDMAN: We'll talk it through,

1 Your Honor.

2 THE COURT: But I do recognize that the exit  
3 plan -- as part of the exit plan, there is an issue as  
4 to which GDB documents are included. I recognize -- I  
5 hear that. I'm leaving you to figure out the way to  
6 present it to me. I don't want to resolve it in an  
7 abstract, nobody does, but the ultimate goal of this  
8 is, again, that there will be an exit plan, and we'll  
9 have that hopefully resolved by the end of the month  
10 and that the next request for documents, I guess -- do  
11 I leave this 2004 open? Does that make the most sense?

12 MR. DESPINS: Well, I think it should be  
13 adjourned to the omnibus, Your Honor.

14 THE COURT: All right. I'll adjourn it till  
15 then.

16 But then the next step would be what additional  
17 discovery is necessary with support. If there is a  
18 change in the schedule, I'm hearing here that everybody  
19 is still sort of aiming for -- are we saying  
20 August 15th, or are we saying August 30th now? What  
21 are we saying?

22 MR. YATES: We're saying August 15th,  
23 Your Honor.

24 THE COURT: All right. If there is a change  
25 from the August 15th, save everybody a lot of gray hair

1 and give notice -- all right? -- because, obviously, if  
2 it's a day or two, it's one issue; if it's months, I  
3 mean, I'm not ordering you to produce it, you do  
4 whatever, but I think people need to know what it is,  
5 and everybody is operating on the assumption right now  
6 that we're in the August 15th timeframe --

7 MR. YATES: Thank you, Your Honor.

8 THE COURT: -- all right?

9 Anything else? See you all in Puerto Rico?

10 Okay. Thank you.

11 (Adjourned, 2:44 p.m.)  
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C E R T I F I C A T I O N

I, Debra D. Lajoie, RPR-FCRR-CRI-RMR, do  
hereby certify that the foregoing pages are a true and  
accurate transcription of my stenographic notes in the  
above-entitled case.

/s/ Debra D. Lajoie

6/18/18